

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
AT&T Corporation Petition for Preemption,)	DA 03-2779
Pursuant to Section 253 of the)	
Communications Act and Common Law)	
Principles, of South Carolina Statutes That)	
Established an Interim Local Exchange)	
Carrier Fund)	

**COMMENTS
of the
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT
OF SMALL TELECOMMUNICATIONS COMPANIES**

I. INTRODUCTION

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these comments in response to the proceeding on the October 2, 2003 Petition for Preemption filed by AT&T Corporation (AT&T).¹ OPASTCO is a national trade association representing approximately 550 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 3.5 million customers. All of OPASTCO's members are rural telephone companies as defined in 47 U.S.C. §153(37). OPASTCO has 13

¹*Wireline Competition Bureau Seeks Comment on AT&T Corporation's Petition for Preemption, Pursuant to Section 253 of the Communications Act and Common Law Principles, of South Carolina's Statutes that Established an Interim Local Exchange Carrier Fund*, CC Docket No. 96-45, Public Notice, DA 03-2779 (rel. Sept. 4, 2003).

telephone company members operating within South Carolina. Moreover, the issues raised by AT&T's petition could impact rural ILECs throughout the nation, should the Commission infringe upon the right of individual states to address the reform of intrastate access charges.

In its petition, AT&T requests that the FCC preempt the South Carolina statute that established the South Carolina Interim LEC Fund (ILF). AT&T asserts that only ILECs can draw funding from the ILF, thereby discriminating against new entrants. It also asserts that the ILF discriminates against interexchange carriers (IXCs), claiming that only IXCs are required to contribute to the fund. On this basis, AT&T argues that the ILF violates Section 253(a) of the Telecommunications Act of 1996 (1996 Act, the Act). AT&T goes on to claim that, since the ILF is not competitively neutral and is inconsistent with the requirements for federal universal service programs under Section 254 of the Act, it is not entitled to the protection afforded in Section 253(b).

Contrary to AT&T's belief, the ILF is a rate rebalancing tool, not a universal service support program. Indeed, the ILF's only relation to universal service is the authority the state statute provides for the South Carolina Public Service Commission (SC PSC) to merge the ILF into state universal service, once funding is finalized and adequate to support the obligation of the ILF. In addition, the ILF does not discriminate against either new entrants or IXCs as claimed by AT&T. Lastly, it would be counterproductive for the Commission, as it seeks to reform intercarrier compensation, to prevent states from devising initiatives to reform intrastate access charges within their respective borders.

II. THE ILF IS NOT A UNIVERSAL SERVICE SUPPORT PROGRAM

Contrary to the assertions made by AT&T, the ILF is not a state universal service fund. Since 1997, the ILF has essentially functioned as an intrastate rate-restructuring plan for small South Carolina local exchange carriers (LECs). It is intended to rebalance intrastate rates by adjusting intrastate switched access rates downward (to rates comparable with those of the largest LECs operating within the state), while adjusting other intrastate rates upward (to levels not to exceed statewide average rates for those services). To the extent there is a shortfall in revenue to LECs as a consequence of these rate adjustments, such shortfalls are to be made up through compensation received from the ILF.

AT&T itself recognized the true nature of the ILF in testimony before the SC PSC. Specifically, AT&T witness James M. Mertz stated that, “[t]he purpose of the ILF is to offset the effect of setting toll switched access rates at levels comparable to BellSouth on the revenues of the incumbent LEC if they cannot do so by increasing other rates.”² Thus, at the time of its adoption, even AT&T recognized the ILF as a rate rebalancing plan and not as a universal service program.

III. THE ILF DOES NOT VIOLATE SECTION 253(a) OF THE 1996 ACT

Despite AT&T’s claims to the contrary, the ILF does not have the effect of deterring competitive entry. In fact, the ILF has had just the opposite effect. It has raised the rates for basic local service while lowering overall intrastate access rates. This has increased the ability of intrastate IXCs to compete in rural areas by reducing the amount

² See, Testimony of James M. Mertz, AT&T, Transcript of Testimony and Proceedings, Hearing #9562, Docket 96-318-C (Dec. 16, 1996), before the Public Service Commission of South Carolina, at Volume 2 of 3, p. 114.

that they pay in intrastate access charges. Moreover, by increasing basic local service rates to levels closer to cost, the ILF has provided an incentive for new entrants – who must be able to offer rates comparable to those of the ILEC in order to be competitive – to enter the local service market.

Within its petition AT&T argues that, because competitive local exchange carriers (CLECs) do not draw from the ILF, this constitutes a barrier to entry. However, the mere fact that competitive carriers do not draw from the ILF does not place them at a competitive disadvantage. This is because the ILF functions as a revenue replacement mechanism for the revenue shortfall caused by specific intrastate access rate reductions made by ILECs that are not permitted to be recovered through intrastate rate rebalancing. In contrast, CLECs are free to price their access and other end-user services at economically rational levels in order to recover their cost of service.

AT&T also claims that only IXC's are required to contribute to the ILF, thereby discriminating against them. In truth, all carriers receiving an access or interconnection rate reduction from participating ILECs contribute to the ILF. The SC PSC adjusts carrier contributions annually based on the total intrastate access and other interconnection minutes used by each contributor. This makes a carrier's contributions to the ILF proportionate to their relative reduction in access or interconnection rates. This means that ILECs also contribute to the ILF, based on the relative reduction in access or interconnection rates that they pay to other ILECs for local calling plans and intraLATA toll.

IV. THE ILF's RELATIONSHIP TO THE SOUTH CAROLINA STATE USF

AT&T's entire petition is based on the mistaken assumption that the ILF is a state universal service fund (USF). It is not. While the ILF was adopted at the same time as enabling legislation for a state USF, it was created within a different statute from the state USF, and more importantly, for a different legislative purpose. The purpose of the reductions in ILECs' intrastate switched access rates has not been to take access rates to cost-based levels, as would be the case under the South Carolina USF. Instead, its purpose is to allow for intrastate rate rebalancing for small South Carolina ILECs and to ensure comparability of intrastate switched access rates among all ILECs within the state. Furthermore, since the ILF does not serve the same legislative purposes as the South Carolina USF, it is not funded in the same manner, nor is it based on the same costing principles as the state USF.

However, state legislation does give the SC PSC specific authority to transition the ILF into the South Carolina USF, once funding for the state USF is finalized and adequate to support the obligations presently met by the ILF. The SC PSC has taken a phased approach to the implementation of the state USF. Hearings are still being conducted with respect to the state USF and another related proceeding is currently on the docket. Thus, the South Carolina USF is neither finalized nor presently adequate to support the rate rebalancing obligations of the ILF and, therefore, the SC PSC is legally barred from merging the ILF into the state USF.

V. CONCLUSION

For the reasons discussed above, the ILF is not a state universal service mechanism nor does its existence impair competition. Therefore, the Commission should dismiss AT&T's Petition for Preemption and affirm South Carolina's right to establish an intrastate rate rebalancing program as it deems appropriate.

Respectfully submitted,

**THE ORGANIZATION FOR THE
PROMOTION AND ADVANCEMENT OF
SMALL TELECOMMUNICATIONS COMPANIES**

By: /s/ Stuart Polikoff
Stuart Polikoff
Director of Government Relations

By: /s/ Jeffrey W. Smith
Jeffrey W. Smith
Policy Analyst

OPASTCO
21 Dupont Circle NW
Suite 700
Washington, DC 20036
(202)659-5990

November 17, 2003

CERTIFICATE OF SERVICE

I, Jeffrey W. Smith, hereby certify that a copy of the comments by the Organization for the Promotion and Advancement of Small Telecommunications Companies was sent by first class United States mail, postage prepaid, on this, the 17th day of November, 2003, to those listed on the attached list.

By: /s/ Jeffrey W. Smith
Jeffrey W. Smith

SERVICE LIST

CC Docket No. 96-45
DA 03-2779

Sheryl Todd
Telecommunications Access
Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Room 5-B540
Washington, D.C. 20554
(Three paper copies)

Kathleen Q. Abernathy,
Commissioner and Chair
Joint Board on Universal Service
Federal Communications Commission
445 12th Street, S.W., Room 8-B115
Washington, D.C. 20554

Kevin J. Martin,
Commissioner
Federal Communications Commission
445 12th Street, S.W., Room 8-A204
Washington, D.C. 20554

Jonathan Adelstein,
Commissioner
Federal Communications Commission
445 12th Street, S.W., Room 8-C302
Washington, D.C. 20554

Michael J. Copps,
Commissioner
Federal Communications Commission
445 12th Street, S.W., Room 8-A302
Washington, D.C. 20554

Bob Rowe,
Commissioner
Montana Public Service Commission
1701 Prospect Avenue
P.O. Box 202601
Helena, MT 59620-2601

Nanette G. Thompson,
Chair
Regulatory Commission of Alaska
1016 West Sixth Avenue, Suite 400
Anchorage, AK 99501-1693

Chairman Michael Powell
Federal Communications Commission
445 12th Street, S.W., Room 8-B201
Washington, D.C. 20554

Lila A. Jaber, Commissioner
Florida Public Service Commission
2540 Shumard Oak Boulevard
Gerald Gunter Building
Tallahassee, FL 32399-0850

J. Thomas Dunleavy, Commissioner
New York Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

Greg Fogleman,
Economic Analyst
Florida Public Service Commission
2540 Shumard Oak Boulevard
Gerald Gunter Building
Tallahassee, FL 32399-0850

Jeff Pursley
Nebraska Public Service Commission
300 The Atrium, 1200 N. Street
P.O. Box 94927
Lincoln, NE 68509-4927

Mary E. Newmeyer,
Federal Affairs Advisor
Alabama Public Service Commission
100 N. Union Street, Suite 800
Montgomery, AL 36104

Larry Stevens,
Utility Specialist
Iowa Utilities Board
350 Maple Street
Des Moines, IA 50319

Joel Shifman,
Senior Advisor
Maine Public Utilities Commission
242 State Street
State House Station 18
Augusta, ME 04333-0018

Carl Johnson,
Telecom Policy Analyst
New York Public Service Commission
3 Empire State Plaza
Albany, NY 12223-1350

Peter Bluhm,
Director of Policy Research
Vermont Public Service Board
Drawer 20
112 State Street, 4th Floor
Montpelier, VT 05620-2701

Lori Kenyon,
Common Carrier Specialist
Regulatory Commission of Alaska
1016 West Sixth Avenue, Suite 400
Anchorage, AK 99501-1693

Charlie Bolle,
Policy Advisor
Nevada Public Utilities Commission
1150 E. Williams Street
Carson City, NV 89701-3105

Jennifer Gilmore,
Principal Telecommunications Analyst
Indiana Utility Regulatory Commission
Indiana Government Center South
302 West Washington Street, Suite E306
Indianapolis, ID 46204

Peter Pescosolido,
Chief, Telecom & Cable Division
State of Connecticut
Dept. of Public Utility Control
10 Franklin Square
New Britain, CT 06051

Michael Lee,
Technical Advisor
Montana Public Service Commission
1701 Prospect Avenue
P.O. Box 202601
Helena, MT 59620-2601

Billy Jack Gregg
Consumer Advocate Division
Public Service Commission of
West Virginia
723 Kanawha Boulevard, East
7th Floor, Union Building
Charleston, West Virginia 25301

Philip McClelland
Assistant Consumer Advocate
Pennsylvania Office of Consumer
Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923

Barbara Meisenheimer,
Consumer Advocate
Missouri Office of Public Counsel
301 West High Street, Suite 250
Truman Building
P.O. Box 7800
Jefferson City, MO 65102

Earl Poucher,
Legislative Analyst
Office of the Public Counsel
State of Florida
111 West Madison, Room 812
Tallahassee, FL 32399-1400

Brad Ramsay,
General Counsel
NARUC
1101 Vermont Avenue, N.W.
Suite 200
Washington, D.C. 20005

David Dowds,
Public Utilities Supervisor
Florida Public Service Commission
2540 Shumard Oak Boulevard
Gerald Gunter Building
Tallahassee, FL 32399-0850

Matthew Brill,
Legal Advisor
Federal Communications Commission
445 12th Street, S.W., Room 8-B115
Washington, D.C. 20554

Daniel Gonzalez,
Senior Legal Advisor
Federal Communications Commission
445 12th Street, S.W., Room 8-A204
Washington, D.C. 20554

Lisa Zaina,
Senior Legal Advisor
Federal Communications Commission
445 12th Street, S.W., Room 8-C302
Washington, D.C. 20554

Carol Matthey,
Deputy Bureau Chief
Federal Communications Commission
Wireline Competition Bureau
445 12th Street, S.W., Room 5-C451
Washington, D.C. 20554

Katherine Schroder,
Senior Advisor
Federal Communications Commission
Wireline Competition Bureau
445 12th Street, S.W., Room 5-A426
Washington, D.C. 20554

Sharon Webber,
Deputy Division Chief
Federal Communications Commission
WCB, Telecommunications Access
Policy Division
445 12th Street, S.W., Room 5-A425
Washington, D.C. 20554

Paul Garnett,
Attorney
Federal Communications Commission
WCB, Telecommunications Access
Policy Division
445 12th Street, S.W., Room 5-A623
Washington, D.C. 20554

Eric Einhorn,
Division Chief
Federal Communications Commission
WCB, Telecommunications Access
Policy Division
445 12th Street, S.W., Room 5-A426
Washington, D.C. 20554

Bryan Clopton,
Mathematician
Federal Communications Commission
WCB, Telecommunications Access
Policy Division
445 12th Street, S.W., Room 5-A465
Washington, D.C. 20554

Anita Cheng,
Assistant Division Chief
Federal Communications Commission
WCB, Telecommunications Access
Policy Division
445 12th Street, S.W., Room 5-A445
Washington, D.C. 20554

Shannon Lipp,
Attorney
Federal Communications Commission
WCB, Telecommunications Access
Policy Division
445 12th Street, S.W., Room 5-A523
Washington, D.C. 20554

Katie King,
Attorney
Federal Communications Commission
WCB, Telecommunications Access
Policy Division
445 12th Street, S.W., Room 5-B544
Washington, D.C. 20554

Geoff Waldau,
Economist
Federal Communications Commission
WCB, Telecommunications Access
Policy Division
445 12th Street, S.W., Room 5-B524
Washington, D.C. 20554

Dana Walton-Bradford,
Attorney
Federal Communications Commission
WCB, Telecommunications Access
Policy Division
445 12th Street, S.W., Room 5-A314
Washington, D.C. 20554

William Scher,
Assistant Division Chief
Federal Communications Commission
WCB, Telecommunications Access
Policy Division
445 12th Street, S.W., Room 5-B550
Washington, D.C. 20554

Diane Law Hsu,
Deputy Division Chief
Federal Communications Commission
WCB, Telecommunications Access
Policy Division
445 12th Street, S.W., Room 6-A360
Washington, D.C. 20554

Jennifer Schneider
Attorney
Federal Communications Commission
WCB, Telecommunications Access
Policy Division
445 12th Street, S.W., Room 6-C212
Washington, D.C. 20554

David Lawson
Jackie Cooper
Sidley Austin Brown & Wood LLP
Counsel to AT&T
1501 K Street, NW
Washington, D.C. 20005

Mark Rosenblum
Lawrence Lafaro
Stephen Garavito
AT&T Corp.
900 Route 202/206 North
Room 3A250
Bedminster, New Jersey 07921

Qualex International
Portals II
445 12th Street, S.W.
Room CY-B402
Washington, D.C. 20554